New Section 155(3)(A)(ii) extends the definition of ''discriminatory tax'' to include any levy by a State or local government that taxes electronic commerce in a manner that results in a different tax rate being imposed on electronic commerce when compared to a transaction that occurred through another means.

(a) No taxes on Internet-unique property, goods, services, or information

Taken together, new Section 155(3)(A)(i) and (ii) mean that property, goods, services, or information that is exchanged or used exclusively over the Internet—with no comparable off-line equivalent—will always be protected from taxation for the duration of the moratorium. Examples of Internet-unique property, goods, services, or information include, but are not limited to, electronic mail over the Internet, Internet site selections, Internet bulletin boards, and Internet search services.

(b) No new collection obligations

New Section 155(3)(A)(iii) states that a tax on electronic commerce is discriminatory if it imposes an obligation to collect or pay a tax on a different person or entity that would be the case if the transaction were accomplished without using the Internet, such as over the telephone or via mail-order. For instance, a tax is not discriminatory if the obligation to collect and remit it falls on the vendor whether the sale is made off-line or online.

This definition also includes taxes that impose tax collection obligations on persons other than the buyer or seller in an Internet transaction. For example, a tax is discriminatory if it imposes tax collection or tax reporting duties on Internet access providers, telephone companies, banks, credit card companies, financial intermediaries, or other entities that might have access to a customer's billing address, since these collection and reporting obligations are not imposed in the case of telephone, mail-order, or retail outlet sales.

(c) No classification of an ISP as a phone company

New Section 155(3)(A)(iv) states that a tax on electronic commerce is discriminatory if it establishes a classification of Internet access provider, and imposes a higher tax rate on this classification than on similar information services delivered through means other than the Internet. The term ''information services'' is expressly defined in new Section 155(5) and in Section 3(2) of the Communications Act of 1934 to *exclude* ''telecommunications service.'' As a result, neither telephone companies nor similar public utilities, as such, may be ''providers of information services delivered through other means'' within the meaning of new Section 155(3)(A)(iv). For this reason, the fact that a telephone company or similar public utility service pays tax at the same or a higher tax rate than an Internet access provider will not prevent the tax on the Internet access provider from being discriminatory. In this way, new Section 155(3)(A)(iv) effectively serves to prohibit States and localities from classifying a provider of Internet access as a telephone company or similar public utility service—for example, for the purpose of applying a business license tax—if such classifications are subject to higher tax rates than other non-Internet information services.

(d) No New ''Nexus''

The definition of ''Discriminatory tax'' in new Section 155(3)(B) is intended to prohibit States and localities from using Internet-based contacts as factor in determining whether an out-of-State business has ''substantial nexus'' with a taxing jurisdiction.

This is intended to is provide added assurance and certainty that the protections of *Quill* v. *North Dakota*, 504 U.S. 298 (1992)—including its requirement that substantial nexus be determined through a ''bright-line'' physical-presence test—will continue to apply to electronic commerce just as they apply to mail-order commerce, unless and until a future Congress decides to alter the current nexus requirements.

In this way, the Act intends to encourage the continued commercial and non-commercial development of the Internet. New Section 155(3)(B) is a direct response to testimony from a State tax administrator, who offered his view to Congress at a July 1997 hearing that the *Quill* protections provided to remote sellers without a substantial in-State physical presence should not apply to businesses engaged in electronic commerce. During the hearing, the tax administrator acknowledged that if a resident of his State were to use the telephone to purchase a good from an out-of-State vendor, his State would not be permitted to impose its tax collection obligations on that vendor unless the vendor otherwise had a substantial in-State physical presence. The tax administrator further testified, however, that if instead the Internet were used to place the order, his State would attempt to require the out-of-State vendor to collect taxes. His rationale was that the flow of data over the Internet into his State, the ''presence'' of a web page on a computer server located in-State, of the supposed ''agency'' relationship between the remote seller and an in-State Internet access provider should be enough to give the remote seller a substantial physical presence in his State.

The Act rejects this approach. The promotion of electronic commerce requires faithful adherence to the U.S. Supreme Court's clear statement in *Quill* that a ''bright-line'' physical presence—not some malleable theory of electronic or economic presence—is required for a State to claim substantial nexus. Even without the Act, the courts, in light of *Quill*, are likely to view such arguments by State tax administrators with great skepticism. But the Act provides clarity and far greater certainty by specifically outlawing State or local efforts to pursue aggressive theories of nexus. This should result in decreased litigation which will benefit States, localities, taxpayers, and an often overworked court system.

New Section 155(3)(B)(i) defines ''Discriminatory tax'' so as to make it clear that Congress considers the creation or maintaining of a site on the Internet to be so insignificant a physical presence that the use of an in-State computer server in this way by a remote seller shall never be considered in determining nexus.

New Section 155(3)(B)(ii) defines ''discriminatory tax'' so as to prohibit a State or political subdivision from deeming a provider of Internet access to be an ''agent'' of a remote seller. Internet access providers commonly display information on the Internet for remote sellers, and often maintain or update the remote seller's web page. Even if the Internet access provider provides these and other ancillary services (such as web page design or account processing) on an in-State computer server, the provider should not be considered an agent for purposes of taxation.

B. No expansion of tax authority

The Act is meant to prevent Internet taxes, not proliferate, encourage, or authorize them. Section 7 of H.R. 4105 expressly states, therefore, that nothing in the Act shall be construed to expand the duty of any person to collect or pay taxes beyond that which existed on the date of enactment of the Act.

Section 7 is specifically intended to make it clear that the Act does not, directly or indirectly, expand the definition of ''substantial nexus'' beyond existing judicial precedent and interpretations of the Commerce Clause of the Untied States Constitution. It is intended to negate any possible inference that the Act might subvert existing requirements that interstate activity have a ''substantial nexus'' (determined through a ''bright-line'' physical-presence test) with the taxing jurisdiction, and that taxes on such activities be fairly apportioned, be fairly related to the services provided by the jurisdiction, and not discriminate against interstate commerce.

It is fully intended that a State or local tax not barred by the provisions of this Act shall not be valid if such tax would otherwise constitute an undue burden on interstate or foreign commerce.

TRIBUTE TO THE ISRAEL 50TH ANNIVERSARY GALA HONOREES

HON. BRAD SHERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. SHERMAN. Mr. Speaker, I rise today to pay tribute to an outstanding collection of individuals for their unwavering commitment to the Jewish Federation of Los Angeles. I would like to take this opportunity to acknowledge the 1997–1998 Jewish Federation Officers Herbert M. Gelfand, Irwin Field, Todd Morgan, Lionel Bell, Carol Katzman, Elaine Caplow, Chuck Boxenbaum, Stuart Buchalter, Jonathan Cookler, Rabbi Harvey J. Fields, Howard I. Friedman, Dr. Beryl Gerber, Meyer Hersch, Harriet Hochman, Evy Lutin, Annette Shapiro, Terri Smooke, Carmen Warschaw, David Wilstein, Mark Lainer, Edna Weiss, David Fox, and Newton Becker for their innovative leadership over the past two years.

The Talmud states ''He who does charity and justice is as if he had filled the whole world with kindness.'' In the spirit of these words, these leaders have infused our community with great kindness, purpose, and pride. Their work strongly represents the Judaic tradition of generosity and concern for others. Their exceptional leadership has been instrumental in laying the foundation for a strong and cohesive Jewish community in the City of Los Angeles.

Mr. Speaker, distinguished colleagues, please join me today in congratulating these leaders for their tremendous dedication to the Jewish Federation.

TRIBUTE TO HIROSHI ''HEEK'' SHIKUMA

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 14, 1998

Mr. FARR of California. Mr. Speaker, I rise today to honor a gentle man, Hiroshi ''Heek'' Shikuma, whose superior abilities and foresight were instrumental in developing an industry that has become a mainstay of the area economy, while his wisdom and gentleness made him a leader in the spiritual community. Mr. Shikuma passed away this past February.

Mr. Shikuma was born, raised, and educated in the Pajaro Valley. During World War